IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28..3..2007

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THE HONOURABLE MR. JUSTICE K. CHANDRU

Writ Petition No.24305 of 2002

Peter Ramesh Kumar .. Petitioner

Vs.

1. The Executive Director,
Marshalls Power and Communication India (P) Ltd.,
No.15, 2nd Floor, Second Cross Street,
Seethammal Colony Extension,
Teynampet, Chennai 18.

2. The Executive Director,
Marshalls Power and Communication India (P) Ltd.,
No.7, Pantheon Road,
Egmore, Chennai 600 008.

3. The Presiding Officer,
I Addl. Labour Court,
Chennai 600 104. .. Respondents

W.P.No.24305 of 2002 has been filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus to call for the records ending with the order dated 20.6.2002 of the I Addl. Labour Court, Chennai in the Claim Petition No.45 of 1999, on its file and quash the same and direct the Respondents 1 and 2 to pay the claim amount of Rs.34,300/- to the petitioner.

For Petitioner : Mr.Peter Ramesh Kumar
(Party-in-person)

For Respondents 1&2: Mr.M. Udayakumar

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O R D E R

The petitioner, a practicing lawyer, has filed the present writ petition against the order of the Labour Court dated 20.6.2002 made in Claim Petition No.45 of 1999.

2. The petitioner made certain claims against the respondents 1 and 2 claiming that he is entitled to get a sum of Rs.34,300/- towards

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conveyance allowance, travelling allowance and three months notice pay. According to the petitioner, he was engaged for a sum of Rs.4,500/- per month plus conveyance reimbursement of Rs.700/- as per Ex.P-1 agreement marked before the Labour Court. In the agreement, the petitioner was described as 'Consultant' of the Company for a period of 11 months.

3. In the counter statement filed on behalf of Respondents 1 and 2, they took the stand that the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 [for short, 'I.D. Act'] and he can only be a professional and no amount is due to be paid to him.

4. The Labour Court recorded the evidence of the petitioner and also three documents were marked on his side as Exs.P-1 to P-3. On overall consideration, the Labour Court came to the conclusion that the petitioner is not a workman and is an independent professional. The Labour Court also doubted the statement made by the petitioner, though he had suspended the practice by informing the Bar Council of India and also stated that no proof was forthcoming. Against this finding of the Labour Court, the present writ petition is filed.

5. Normally, on the finding of facts recorded by the trial court, this Court will not interfere under Article 226 of the Constitution of India. However, the petitioner in his affidavit has stated that Accounts Executive, Sales-cum-Administrative Officer, Assistant Secretary, Area Sales Executive have all been held to be workmen by various High Courts and the Supreme Court and mere description cannot disentitle the petitioner from claiming the relief under the Industrial Disputes Act.

6. Even the preamble portion of the agreement, marked as Ex.P-1, states that the petitioner is an expert in law and he had agreed to act as a Consultant of the company. In paragraph 4 of the agreement, it is stated that he will render all help on technical questions in the advancement of the business of the company and make suggestions for improvement in production. It is, in this context, relevant to refer to a recent decision of the Supreme Court reported in (2007) 1 SCC 491 [Muir Mills Unit of NTC (U.P.) Ltd. vs. Swayam Prakash Srivastava and another], wherein the Apex Court decided that a Legal Assistant will not come within the meaning of the definition of the word 'workman' under the Industrial Disputes Act and in paragraph 34 it was observed as follows :-

> Para 34: The question before the Labour Court was "whether the applicant was a workman"; the Labour Court held that he was a workman, which was upheld by the High Court, the management preferred an appeal to this Court. Following the decisions of this Court in A.Sundarambal v. Govt. of Goa, Daman and Diu [(1988) 4 SCC 42], H.R.Adyanthaya v. Sandoz (India) Ltd. [(1994) 5 SCC 737] and rejecting S.K.Varma v. Mahesh Chandra [(1983) 4 SCC 214], this Court held: (Sonepat Coop. Sugar Mills Ltd. Case [(2005) 3

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SCC 232] SCC p.237, paras 16017)

"16. Thus, a person who performs one or the other jobs mentioned in the aforementioned provisions only would come within the purview of the definition of workman. The job of a clerk ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. The question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regards the dominant nature thereof. With a view to give effect to the expression to do 'any manual, unskilled, skilled, technical, operational, clerical or supervisory work', the job of the employee concerned must fall within one or the other category thereof. It would, therefore, not be correct to contend that merely because the employee had not been performing any managerial or supervisory duties, ipso facto he would be a workman.

17. ... The respondent had not been performing any stereotype job. His job involved creativity. He not only used to render legal opinions on a subject but also used to draft pleadings on behalf of the appellant as also represent it before various courts / authorities. He would also discharge quasi-judicial functions as an enquiry officer in departmental enquiries against the workmen. Such a job, in our considered opinion, would not make him a workman."

In paragraphs 38 to 44 it was stated as follows:-

Para 38: Furthermore, if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialised knowledge and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine and law. These three professions each hold to a specific code of ethics and members are almost universally required to swear to some form of oath to uphold those ethics, therefore "professing" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value and importance of its particular oath in the practise of that profession.

Para 39: A member of a profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one's living, so in that sense sport is a profession.

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Para 40: Therefore, it is clear that Respondent 1 herein is a professional and never can a professional be termed as a workman under any law."

7. In the light of the same, the contention raised by the petitioner can never be accepted and the order of the Labour Court does not deserve any interference and the writ petition is accordingly dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

The Presiding Officer,
I Addl. Labour Court,
Chennai 600 104.

WP.24305/2002

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